

TITLE 1. ADMINISTRATION
STATE BOARD OF ELECTIONS

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-70. Absentee Voting (amending 1VAC20-70-20).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: October 23, 2020.

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Summary:

The amendments clarify when a general registrar is required to count a returned mail absentee ballot with a missing or illegible postmark. Changes since the proposed regulation (i) add the use of an Intelligent Mail barcode and, if necessary, the sworn oath on the ballot's B envelope to determine the ballot's submission date and (ii) remove the definition of "postmark."

1VAC20-70-20. Material omissions from absentee ballots.

A. Pursuant to the requirements of § 24.2-706 of the Code of Virginia, a timely received absentee ballot contained in an Envelope B shall not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any Envelope B containing such omissions shall be rendered invalid if any of the following exists:

1. Except as provided in subdivisions C 2 and 3 of this section, the voter did not include his full first name;
2. The voter did not provide his last name;
3. The voter omitted his generational suffix when one or more individuals with the same name are registered at the same address, and it is impossible to determine the identity of the voter;
4. The voter did not provide his house number and street name or his rural route address;
5. The voter did not provide either his city or zip code;
6. The voter did not sign Envelope B; or
7. The voter's witness did not sign Envelope B.

C. The ballot shall not be rendered invalid if on the Envelope B:

1. The voter included his full name in an order other than "last, first, middle";
2. The voter used his first initial instead of his first full name, so long as the voter provided his full middle name;
3. The voter provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");

4. If the voter provided his first name and last name, the voter did not provide a middle name or a middle initial;
5. The voter did not provide his residential street identifier (Street, Drive, etc.);
6. The voter did not provide a zip code, so long as the voter provided his city;
7. The voter did not provide his city, so long as the voter provided his zip code;
8. The voter omitted the date, or provided an incorrect or incomplete date on which he signed Envelope B; or
9. The ballot is imperfectly sealed within Envelope B, provided that the outer envelope with Envelope B and the ballot arrived sealed.
10. The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.

D. For the purposes of this regulation, "city" may include the voter's locality, town, or any acceptable mailing name for the five-digit zip code of the voter's residence.

E. Whether an error or omission on an Envelope B not specifically addressed by this regulation is material and shall render the absentee ballot invalid shall be determined by a majority of the officers of the election present.

F. ~~[The ballot shall not be rendered invalid based on a missing or illegible postmark if the]~~ If a ballot is received by the general registrar's office by noon on the third day after the election pursuant to § 24.2-709 of the Code of Virginia ~~[and but]~~ the return envelope ~~[does not have has]~~ a ~~[missing or illegible]~~ postmark, ~~[or the postmark is missing or illegible the General Registrar shall refer to the Intelligent Mail barcode on the return envelope to determine whether the ballot was mailed on or before the date of the relevant election.~~

1. If there is evidence from the Intelligent Mail barcode that the ballot was mailed after the close of polls for the relevant election, the ballot shall be rendered invalid.

2. If there is no evidence from the Intelligent Mail barcode that the ballot was mailed after the close of polls for the relevant election, including if the Intelligent Mail barcode was not scanned, the General Registrar shall refer to the date on which the oath on Envelope B was signed.

a. If the oath on Envelope B was signed on or before the date of the relevant election, the ballot shall not be rendered invalid due to receipt after the close of polls by the General Registrar.

b. If the oath on Envelope B was signed after the date of the relevant election, the ballot shall be rendered invalid.]

~~[G. For the purposes of this chapter, "postmark" means an official postmark of the United States Postal Service (USPS) or any other official indicia of confirmation of mailing by the USPS or other postal or delivery service.]~~